

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2710

Introduced by Assembly Member Cooley

February 19, 2016

An act to ~~amend Section 38.5 of~~ *amend, renumber, and add Sections 1063.5 and 1063.14 of*, and to *repeal Sections 1063.45 and 1063.135 of*, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2710, as amended, Cooley. Insurance: ~~notice: electronic transmission.~~ *California Insurance Guarantee Association: premium charges.*

(1) Existing law creates the California Insurance Guarantee Association (CIGA) and requires all insurers admitted to transact specified insurance lines in this state to become members. Each time an insurer becomes insolvent, to the extent necessary to secure funds for payment of covered claims of that insolvent insurer and also for payment of reasonable costs of adjusting the claims, CIGA is required to collect premium payments from its member insurers sufficient to discharge its obligations, as specified.

This bill, among other things, would no longer require an insurer to become insolvent in order for CIGA to collect premium payments from the member insurers and would require CIGA to collect premiums in order to secure funds for the payment of its administrative expenses.

(2) Existing law requires that the rate of premium charged be a uniform percentage of net direct written premium, as defined, in the preceding calendar year applicable to specific categories of insurance. The rate of premium charges to each member insurer in the appropriate

categories are initially based on the written premium of each insurer as shown in the latest year's annual financial statement on file with the Insurance Commissioner and are later adjusted as provided.

This bill would delete the requirements that the rate of premium charges be initially based on the written premium of each insurer and be adjusted later as provided, and would instead require that the rate of premium charges to each member insurer in the appropriate categories be based on the net direct written premium of each insurer as shown in the latest year's annual financial statement on file with the commissioner. The bill would also make conforming changes.

(3) Existing law authorizes CIGA to exempt or defer a member insurer from paying the premium charge if the payment would cause the member insurer's financial statement to reflect an amount of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Deferred premium charges are required to be paid when the payment will not reduce capital or surplus below required minimums. These payments are credited against future premium charges to those companies receiving larger premium charges by virtue of the deferment.

This bill would delete the requirement that the payments be credited against future premium charges to those companies receiving larger premium charges by virtue of the deferment.

(4) Existing law requires CIGA's plan of operations to contain provisions requiring each member insurer to recoup the premium charge paid to CIGA from its insureds over a reasonable length of time by way of a reasonably calculated surcharge on insurance policies to which the provisions of CIGA apply.

This bill, commencing January 1, 2017, among other things, would instead require each member insurer to recoup the premium charge from its insureds in the year following the charge, would require the member insurer to file a report in accordance with the provisions of the plan of operation indicating the amount of surcharges it has collected, and would prohibit a member insurer electing to omit collecting surcharges from any of its insureds from being entitled to any reimbursement from CIGA, as specified.

~~Existing law authorizes any written notice required to be given or mailed to any person by an insurer relating to any insurance on risks or on operations in this state, with exceptions, to be provided by electronic~~

transmission, pursuant to certain provisions, if each party has agreed to conduct the transaction by electronic means, as provided.

~~This bill would make nonsubstantive, technical changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1063.5 of the Insurance Code is amended*
2 *and renumbered, to immediately precede Section 1063.5 of the*
3 *Insurance Code, to read:*

4 ~~1063.5.~~

5 1063.45. (a) (1) Each time an insurer becomes insolvent then,
6 to the extent necessary to secure funds for the association for
7 payment of covered claims of that insolvent insurer and also for
8 payment of reasonable costs of adjusting the claims, the association
9 shall collect premium payments from its member insurers sufficient
10 to discharge its obligations. ~~The~~

11 (2) ~~The association shall allocate its claim payments and costs,~~
12 ~~incurred or estimated to be incurred, to one or more of the~~
13 ~~following categories: (a) workers' compensation claims; (b)~~
14 ~~homeowners' claims, and automobile claims, which shall include:~~
15 ~~automobile material damage, automobile liability (both personal~~
16 ~~injury and death and property damage), medical payments and~~
17 ~~uninsured motorist claims; and (c) claims other than workers'~~
18 ~~compensation, homeowners', and automobile, as above defined.~~
19 ~~Separate~~

20 (A) *Workers' compensation claims.*

21 (B) *Homeowners' claims and automobile claims, including all*
22 *of the following:*

23 (i) *Automobile material damage.*

24 (ii) *Automobile liability (both personal injury and death and*
25 *property damage).*

26 (iii) *Medical payments.*

27 (iv) *Uninsured motorist claims.*

28 (C) *Claims other than workers' compensation, homeowners,*
29 *and automobile, as defined above.*

30 (3) *Separate premium payments shall be required for each*
31 *category.* ~~The~~

(4) *The* premium payments for each category shall be used to pay the claims and costs allocated to that category. ~~The~~

(b) (1) *The* rate of premium charged shall be a uniform percentage of net direct written premium in the preceding calendar year applicable to that category. ~~The~~

(2) *The* rate of premium charges to each member *insurer* in the appropriate categories shall initially be based on the written premium of each insurer as shown in the latest year's annual financial statement on file with the commissioner. ~~The~~

(3) *The* initial premium shall be adjusted by applying the same rate of premium charge as initially used to each insurer's written premium as shown on the annual statement for the second year following the year on which the initial premium charge was based. ~~The~~

(4) (A) *The* difference between the initial premium charge and the adjusted premium charge shall be charged or credited to each member insurer by the association as soon as practical after the filing of the annual statements of the member insurers with the commissioner for the year on which the adjusted premium is based. ~~Any~~

(B) *Any* credit due in a specific category to a member insurer as a result of the adjusted premium calculation may be refunded to the member insurer at the discretion of the association if the member insurer has agreed with the commissioner to no longer write insurance in that category but has not withdrawn from the state and surrendered its certificate of authority. However, in the case of an insurer that was a member insurer when the initial premium charge was made and that paid the initial assessment but is no longer a member insurer at the time of the adjusted premium charge by reason of its insolvency or its withdrawal from the state and surrender of its certificate of authority to transact insurance in this state, any credit accruing to that insurer shall be refunded to it by the association. ~~Net~~

(c) (1) *For purposes of this section, "net direct written premiums" shall mean* means the amount of gross premiums, less return premiums, received in that calendar year upon business done in this state, other than premiums received for reinsurance. ~~In~~

(2) *In* cases of a dispute as to the amount of the net direct written premium between the association and one of its ~~members~~ member

1 *insurers*, the written decision of the commissioner shall be final.

2 ~~The~~

3 (d) (1) *The* premium charged to any member insurer for any of
4 the three categories or a category established by the association
5 shall not be more than 2 percent of the net direct premium written
6 in that category in this state by that member *insurer* per year,
7 starting on January 1, 2003, until December 31, 2007, and
8 thereafter shall be 1 percent per year, until January 1, 2015.

9 ~~Commencing~~

10 (2) *Commencing* January 1, 2015, the premium charged to any
11 member insurer for any of the three categories or a category
12 established by the association shall not be more than 2 percent of
13 the net direct written premium unless there are bonds outstanding
14 that were issued pursuant to Article 14.25 (commencing with
15 Section 1063.50) or Article 14.26 (commencing with Section
16 1063.70). ~~If~~

17 (3) *If* bonds issued pursuant to either article are outstanding, the
18 premium charged to a member insurer for the category for which
19 the bond proceeds are being used to pay claims and expenses shall
20 not be more than 1 percent of the net direct written premium for
21 that category. ~~The~~

22 (e) (1) *The* association may exempt or defer, in whole or in
23 part, the premium charge of any member insurer, if the premium
24 charge would cause the member insurer's financial statement to
25 reflect an amount of capital or surplus less than the minimum
26 amounts required for a certificate of authority by any jurisdiction
27 in which the member insurer is authorized to transact insurance.
28 However, during the period of deferment, no dividends shall be
29 paid to shareholders or policyholders by the company whose
30 premium charge was deferred. ~~Deferred~~

31 (2) *Deferred* premium charges shall be paid when the payment
32 will not reduce capital or surplus below required minimums. These
33 payments shall be credited against future premium charges to those
34 companies receiving larger premium charges by virtue of the
35 deferment. ~~After~~

36 (f) *After* all covered claims of the insolvent insurer and expenses
37 of administration have been paid, any unused premiums and any
38 reimbursements or claims dividends from the liquidator remaining
39 in any category shall be retained by the association and applied to
40 reduce future premium charges in the appropriate category.

1 However, an insurer~~—which~~ *that* ceases to be a member of the
2 association, other than an insurer that has become insolvent or has
3 withdrawn from the state and has surrendered its certificate of
4 authority following an initial assessment that is entitled to a refund
5 based upon an adjusted assessment as provided above in this
6 section, shall have no right to a refund of any premium previously
7 remitted to the association.~~The~~

8 (g) *The* commissioner may suspend or revoke the certificate of
9 authority to transact business in this state of a member insurer
10 ~~which~~ *that* fails to pay a premium when due and after demand has
11 been made.

12 ~~Interest~~

13 (h) *Interest* at a rate equal to the current federal reserve discount
14 rate plus 2 ½ percent per annum shall be added to the premium of
15 any member insurer~~—which~~ *that* fails to submit the premium
16 requested by the association within 30 days after the mailing
17 request. However, in no event shall the interest rate exceed the
18 legal maximum.

19 (i) *This section shall apply only to premium charges paid prior*
20 *to January 1, 2017.*

21 (j) *This section shall remain in effect only until January 1, 2020,*
22 *and as of that date is repealed, unless a later enacted statute, that*
23 *is enacted before January 1, 2020, deletes or extends that date.*

24 SEC. 2. Section 1063.5 is added to the Insurance Code, to
25 read:

26 1063.5. (a) (1) *To the extent necessary to secure funds for the*
27 *association for payment of the administrative expenses of the*
28 *association, covered claims of insolvent insurers, and for payment*
29 *of reasonable costs of adjusting the claims, the association shall*
30 *collect premium payments from its member insurers sufficient to*
31 *discharge its obligations.*

32 (2) *The association shall allocate its claim payments and costs,*
33 *incurred or estimated to be incurred, to one or more of the*
34 *following categories:*

35 (A) *Workers' compensation claims.*

36 (B) *Homeowners' claims and automobile claims, including all*
37 *of the following:*

38 (i) *Automobile material damage.*

39 (ii) *Automobile liability (both personal injury and death and*
40 *property damage).*

1 (iii) *Medical payments.*

2 (iv) *Uninsured motorist claims.*

3 (C) *Claims other than workers' compensation, homeowners',*
4 *and automobile, as defined above.*

5 (3) *Separate premium payments shall be required for each*
6 *category.*

7 (4) *The premium payments for each category shall be used to*
8 *pay the claims and costs allocated to that category.*

9 (b)(1) *The rate of premium charged shall be a uniform*
10 *percentage of net direct written premium in the preceding calendar*
11 *year applicable to that category.*

12 (2) (A) *The rate of premium charges to each member insurer*
13 *in the appropriate categories shall be based on the net direct*
14 *written premium of each member insurer as shown in the latest*
15 *year's annual financial statement on file with the commissioner.*

16 (B) *Any credit due in a specific category to a member insurer*
17 *may be used as an offset against any subsequent premium charge*
18 *in that category and may be refunded to the member insurer at the*
19 *discretion of the association if the member insurer has agreed with*
20 *the commissioner to no longer write insurance in that category*
21 *but has not withdrawn from the state and surrendered its certificate*
22 *of authority. However, in the case of an insurer that was a member*
23 *insurer when the premium charge was made and that paid the*
24 *premium charge but is no longer a member insurer by reason of*
25 *its insolvency or its withdrawal from the state and surrender of*
26 *its certificate of authority to transact insurance in this state, any*
27 *credit accruing to that insurer shall be refunded to it by the*
28 *association.*

29 (c) (1) *For purposes of this section, "net direct written*
30 *premiums" means the amount of gross premiums, less return*
31 *premiums, received in that calendar year upon business done in*
32 *this state, other than premiums received for reinsurance.*

33 (2) *In cases of a dispute as to the amount of the net direct written*
34 *premium between the association and one of its member insurers,*
35 *the written decision of the commissioner shall be final.*

36 (d) *In charging premiums to member insurers, the association*
37 *shall adjust, if necessary, the net direct written premiums shown*
38 *on a member insurer's annual statement by excluding any*
39 *premiums written for any lines of insurance or types of coverage*

1 not covered by this article under paragraph (3) of subdivision (c)
2 of Section 1063.1.

3 (e) (1) The premium charged to any member insurer for any
4 of the three categories or a category established by the association
5 shall not be more than 2 percent of the net direct written premium
6 unless there are bonds outstanding that were issued pursuant to
7 Article 14.25 (commencing with Section 1063.50) or Article 14.26
8 (commencing with Section 1063.70).

9 (2) If bonds issued pursuant to either article are outstanding,
10 the premium charged to a member insurer for the category for
11 which the bond proceeds are being used to pay claims and expenses
12 shall not be more than 1 percent of the net direct written premium
13 for that category.

14 (f) (1) The association may exempt or defer, in whole or in part,
15 the premium charge of any member insurer, if the premium charge
16 would cause the member insurer's financial statement to reflect
17 an amount of capital or surplus less than the minimum amounts
18 required for a certificate of authority by any jurisdiction in which
19 the member insurer is authorized to transact insurance. However,
20 during the period of deferment, no dividends shall be paid to
21 shareholders or policyholders by the company whose premium
22 charge was deferred.

23 (2) Deferred premium charges shall be paid when the payment
24 will not reduce capital or surplus below required minimums.

25 (g) After all covered claims of insolvent insurers and expenses
26 of administration have been paid, any unused premiums and any
27 reimbursements or claims dividends from liquidators remaining
28 in any category shall be retained by the association and applied
29 to reduce future premium charges in the appropriate category.

30 (h) The commissioner may suspend or revoke the certificate of
31 authority to transact business in this state of a member insurer
32 that fails to pay a premium when due and after demand has been
33 made.

34 (i) Interest at a rate equal to the current federal reserve discount
35 rate plus $2\frac{1}{2}$ percent per annum shall be added to the premium
36 of any member insurer that fails to submit the premium requested
37 by the association within 30 days after the mailing request.
38 However, in no event shall the interest rate exceed the legal
39 maximum.

1 (j) *This section shall apply only to premium charges paid on or*
2 *after January 1, 2017.*

3 SEC. 3. *Section 1063.14 of the Insurance Code is amended*
4 *and renumbered, to immediately precede Section 1063.14 of the*
5 *Insurance Code, to read:*

6 ~~1063.14.~~

7 1063.135. (a) The plan of operation adopted pursuant to
8 subdivision (c) of Section 1063 shall contain provisions whereby
9 each member insurer is required to recoup over a reasonable length
10 of time a sum reasonably calculated to recoup the assessments
11 paid by the member insurer under this article by way of a surcharge
12 on premiums charged for insurance policies to which this article
13 applies. Amounts recouped shall not be considered premiums for
14 any other purpose, including the computation of gross premium
15 tax or agents' commission.

16 (b) The amount of any surcharge shall be separately stated on
17 either a billing or policy declaration sent to an insured. The
18 association shall determine the rate of the surcharge and the
19 collection period for each category and these shall be mandatory
20 for all member insurers of the association who write business in
21 those categories. Member insurers who collect surcharges in excess
22 of premiums paid pursuant to Section ~~1063.5~~ 1063.45 for an
23 insolvent insurer shall remit the excess to the association as an
24 additional premium within 30 days after the association has
25 determined the amount of the excess recoupment and given notice
26 to the member insurer of that amount. The excess shall be applied
27 to reduce future premium charges in the appropriate category.

28 (c) The plan of operation may permit a member insurer to omit
29 collection of the surcharge from its insureds when the expense of
30 collecting the surcharge would exceed the amount of the surcharge.
31 However, nothing in this section shall relieve the member insurer
32 of its obligation to recoup the amount of surcharge otherwise
33 collectible.

34 (d) *This section shall apply only to premium charges paid prior*
35 *to January 1, 2017.*

36 (e) *This section shall remain in effect only until January 1, 2020,*
37 *and as of that date is repealed, unless a later enacted statute, that*
38 *is enacted before January 1, 2020, deletes or extends that date.*

39 SEC. 4. *Section 1063.14 is added to the Insurance Code, to*
40 *read:*

1 1063.14. (a) (1) *The plan of operation adopted pursuant to*
2 *subdivision (c) of Section 1063 shall contain provisions whereby*
3 *each member insurer is required to recoup in the year following*
4 *the premium charge a sum calculated to recoup the premium*
5 *charge paid by the member insurer under this article by way of a*
6 *surcharge on premiums charged for insurance policies to which*
7 *this article applies.*

8 (2) *Amounts recouped shall not be considered premiums for*
9 *any other purpose, including the computation of gross premium*
10 *tax or agents' commission.*

11 (b) (1) *The amount of any surcharge shall be separately stated*
12 *on either a billing or policy declaration sent to an insured. The*
13 *association shall determine the rate of the surcharge and the*
14 *collection period for each category, and these shall be mandatory*
15 *for all member insurers of the association who write business in*
16 *those categories.*

17 (2) *Each member insurer shall file a report in accordance with*
18 *the provisions of the plan of operation indicating the amount of*
19 *surcharges it has collected.*

20 (A) *Member insurers who collect surcharges in excess of*
21 *premium charges paid in the preceding year pursuant to Section*
22 *1063.5 shall remit the excess to the association as an additional*
23 *premium within 30 days after the association has determined the*
24 *amount of the excess recoupment and given notice to the member*
25 *insurer of that amount. The excess shall be applied to reduce future*
26 *premium charges in the appropriate category.*

27 (B) *Member insurers who report surcharge collections that are*
28 *less than what they paid in the preceding year's premium charge*
29 *shall receive reimbursement from the association for the shortfall*
30 *in surcharge collection.*

31 (c) (1) *The plan of operation may permit a member insurer to*
32 *omit collection of the surcharge from its insureds when the expense*
33 *of collecting the surcharge would exceed the amount of the*
34 *surcharge.*

35 (2) *A member insurer electing to omit collecting surcharges*
36 *from any of its insureds shall not be entitled to any reimbursement*
37 *from the association pursuant to subdivision (b).*

38 (3) *However, nothing in this section shall relieve the member*
39 *insurer of its obligation to recoup the amount of surcharge*
40 *otherwise collectible.*

1 (d) *This section shall apply only to premium charges paid on*
2 *or after January 1, 2017.*

3 ~~SECTION 1. Section 38.5 of the Insurance Code, as amended~~
4 ~~by Section 4 of Chapter 369 of the Statutes of 2013, is amended~~
5 ~~to read:~~

6 ~~38.5.—(a) A written notice required to be given or mailed to a~~
7 ~~person by an insurer relating to any insurance on risks or on~~
8 ~~operations in this state not excepted by subdivision (a), (b), (c),~~
9 ~~(d), (e), or (g) of Section 1851 from the coverage of Chapter 9~~
10 ~~(commencing with Section 1850.4) of Part 2 of Division 1 of this~~
11 ~~code may, if not excluded by subdivision (b) or (c) of Section~~
12 ~~1633.3 of the Civil Code, be provided by electronic transmission~~
13 ~~pursuant to Title 2.5 (commencing with Section 1633.1) of Part 2~~
14 ~~of Division 3 of the Civil Code, if each party has agreed to conduct~~
15 ~~the transaction by electronic means pursuant to Section 1633.5 of~~
16 ~~the Civil Code. The affidavit of the person who initiated the~~
17 ~~electronic transmission, stating the facts of that transmission into~~
18 ~~an information processing system outside of the control of the~~
19 ~~sender or of a person that sent the electronic record on behalf of~~
20 ~~the sender, is prima facie evidence that the notice was transmitted~~
21 ~~and shall be sufficient proof of notice. A notice provided by~~
22 ~~electronic transmission shall be treated as if mailed or given for~~
23 ~~the purposes of any provision of this code, except as provided by~~
24 ~~subdivision (g) of Section 1633.15 of the Civil Code. The insurance~~
25 ~~company shall maintain a system for confirming that a notice or~~
26 ~~document that is to be provided by electronic means has been sent~~
27 ~~in a manner consistent with Section 1633.15 of the Civil Code. A~~
28 ~~valid electronic signature shall be sufficient for any provision of~~
29 ~~law requiring a written signature. The insurance company shall~~
30 ~~retain a copy of the confirmation and electronic signature, when~~
31 ~~either is required, with the policy information so that they are~~
32 ~~retrievable upon request by the Department of Insurance while the~~
33 ~~policy is in force and for five years thereafter.~~

34 ~~(b) The offer of renewal required by Sections 663 and 678, the~~
35 ~~notice of conditional renewal required by Section 678.1, and the~~
36 ~~offer of coverage or renewal or any disclosure required by Section~~
37 ~~10086 and the offer of renewal for a workers' compensation policy~~
38 ~~may be provided by electronic transmission if an insurer complies~~
39 ~~with all of the following:~~

1 ~~(1) An insurer, or insurer's representative, acquires the consent~~
2 ~~of the insured to opt in to receive the offer, notice, or disclosure~~
3 ~~by electronic transmission, and the insured has not withdrawn that~~
4 ~~consent, prior to providing the offer, notice, or disclosure by~~
5 ~~electronic transmission. An insured's consent may be acquired~~
6 ~~verbally, in writing, or electronically. If consent is acquired~~
7 ~~verbally, the insurer shall confirm consent in writing or~~
8 ~~electronically. The insurer shall retain a record of the insured's~~
9 ~~consent to receive the offer, notice, or disclosure by electronic~~
10 ~~transmission with the policy information so that it is retrievable~~
11 ~~upon request by the Department of Insurance while the policy is~~
12 ~~in force and for five years thereafter.~~

13 ~~(2) An insurer discloses, in writing or electronically, to the~~
14 ~~insured all of the following:~~

15 ~~(A) The opt in to receive the offer, notice, or disclosure by~~
16 ~~electronic transmission is voluntary.~~

17 ~~(B) That the insured may opt out of receiving the offer, notice,~~
18 ~~or disclosure by electronic transmission at any time, and the process~~
19 ~~or system for the insured to opt out.~~

20 ~~(C) A description of the offer, notice, or disclosure that the~~
21 ~~insured will receive by electronic transmission.~~

22 ~~(D) The process or system to report a change or correction in~~
23 ~~the insured's email address.~~

24 ~~(E) The insurer's contact information, which includes, but is~~
25 ~~not limited to, a toll-free number or an insurer's Internet Web site~~
26 ~~address.~~

27 ~~(3) An insurer shall include the insured's email address on the~~
28 ~~policy declaration page.~~

29 ~~(4) An insurer shall annually provide one free printed copy of~~
30 ~~any offer, notice, or disclosure described in this subdivision upon~~
31 ~~request by the insured.~~

32 ~~(5) An insurer shall maintain a process or system that can~~
33 ~~demonstrate that the offer, notice, or disclosure provided by~~
34 ~~electronic transmission was both sent and received consistent with~~
35 ~~Section 1633.15 of the Civil Code. If a different method of sending~~
36 ~~or receiving is agreed upon by the insurer and the insured pursuant~~
37 ~~to Section 1633.15 of the Civil Code, an insurer shall comply with~~
38 ~~the provisions of this subdivision. The insurer shall retain and~~
39 ~~document information so that the documentation and information~~
40 ~~is retrievable upon request by the Department of Insurance while~~

1 the current policy is in force and for five years thereafter related
2 to its process or system demonstrating that the offer, notice, or
3 disclosure provided by electronic transmission was sent to the
4 insured by the applicable statutory regular mail delivery deadlines
5 and received electronically. The offer, notice, or disclosure
6 provided by electronic transmission shall be treated as if mailed
7 so long as the insurer delivers it to the insured in compliance with
8 the applicable statutory regular mail delivery deadlines.

9 (A) Acceptable methods for an insurer to demonstrate that the
10 offer, notice, or disclosure was sent to the insured include simple
11 mail transfer protocol server log files indicating transmission, or
12 other methodologies indicating sent transmission consistent with
13 standards set forth in Section 1633.15 of the Civil Code.

14 (B) Acceptable methods for an insurer to demonstrate that the
15 offer, notice, or disclosure was received by the insured include
16 server log files indicating that the email or application has been
17 received, or log files showing that the insured logged into his or
18 her secured account with the insurer, or other methodologies
19 indicating received transmission consistent with standards set forth
20 in Section 1633.15 of the Civil Code.

21 (6) If the offer, notice, or disclosure is not delivered directly to
22 the electronic address designated by the insured, but placed at an
23 electronic address accessible to the insured, an insurer shall notify
24 the insured in plain, clear, and conspicuous language at the
25 electronic address designated by the insured that describes the
26 offer, notice, or disclosure, informs that insured that it is available
27 at another location, and provides instructions to the insured as to
28 how to obtain the offer, notice, or disclosure.

29 (7) (A) Upon an insurer receiving information indicating that
30 the offer, notice, or disclosure sent by electronic transmission was
31 not received by the insured, the insurer shall, within two business
32 days, either clause (i) or (ii):

33 (i) Contact the insured to confirm or update the insured's email
34 address and resend the offer, notice, or disclosure by electronic
35 transmission. If the insurer elects to resend the offer, notice, or
36 disclosure by electronic transmission, the insurer shall demonstrate
37 the transmission was received by the insured, pursuant to paragraph
38 (5). If the insurer is unable to confirm or update the insured's email
39 address, the insurer shall resend the offer, notice, or disclosure by
40 regular mail to the insured at the address shown on the policy.

1 (ii) ~~Resend the offer, notice, or disclosure initially provided by~~
2 ~~electronic transmission by regular mail to the insured at the address~~
3 ~~shown on the policy.~~

4 (B) ~~If the insurer sends the first electronic offer, notice, or~~
5 ~~disclosure within the time period required by law and the insurer~~
6 ~~complies with both paragraph (5) and subparagraph (A) of this~~
7 ~~paragraph, the electronic offer, notice, or disclosure sent pursuant~~
8 ~~to clause (i) or (ii) of subparagraph (A) shall be treated as if mailed~~
9 ~~in compliance with the applicable statutory regular mail delivery~~
10 ~~deadlines.~~

11 (8) ~~On or before January 1, 2018, the commissioner shall submit~~
12 ~~a report to the Governor and to the committees of the Senate and~~
13 ~~Assembly having jurisdiction over insurance and the judiciary,~~
14 ~~regarding the impact and implementation of the authorization of~~
15 ~~the electronic transmission of certain insurance renewal offers,~~
16 ~~notices, or disclosures as authorized by this section. The report~~
17 ~~shall include input from insurers, consumers, and consumer~~
18 ~~organizations, and shall include an assessment of the department's~~
19 ~~experience pertaining to the authorization of the electronic~~
20 ~~transmission of insurance renewals as authorized by this section.~~

21 (e) ~~The department may suspend an insurer from providing~~
22 ~~offers, notices, or disclosures by electronic transmission if there~~
23 ~~is a pattern or practices that demonstrate the insurer has failed to~~
24 ~~comply with the requirements of this section. An insurer may~~
25 ~~appeal the suspension and resume its electronic transmission of~~
26 ~~offers, notices, or disclosures upon communication from the~~
27 ~~department that the changes the insurer made to its process or~~
28 ~~system to comply with the requirements of this section are~~
29 ~~satisfactory.~~

30 (d) ~~This section shall remain in effect only until January 1, 2019,~~
31 ~~and as of that date is repealed, unless a later enacted statute, that~~
32 ~~is enacted before January 1, 2019, deletes or extends that date.~~

33 SEC. 2. ~~Section 38.5 of the Insurance Code, as added by~~
34 ~~Section 5 of Chapter 369 of the Statutes of 2013, is amended to~~
35 ~~read:~~

36 38.5. (a) ~~A written notice required to be given or mailed to a~~
37 ~~person by an insurer relating to any insurance on risks or on~~
38 ~~operations in this state not excepted by Section 1851 from the~~
39 ~~coverage of Chapter 9 (commencing with Section 1850.4) of Part~~
40 ~~2 of Division 1 of this code may, if not excluded by subdivision~~

1 ~~(b) or (c) of Section 1633.3 of the Civil Code, be provided by~~
2 ~~electronic transmission pursuant to Title 2.5 (commencing with~~
3 ~~Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each~~
4 ~~party has agreed to conduct the transaction by electronic means~~
5 ~~pursuant to Section 1633.5 of the Civil Code. The affidavit of the~~
6 ~~person who initiated the electronic transmission, stating the facts~~
7 ~~of that transmission into an information processing system outside~~
8 ~~of the control of the sender or of a person that sent the electronic~~
9 ~~record on behalf of the sender, is prima facie evidence that the~~
10 ~~notice was transmitted and shall be sufficient proof of notice. A~~
11 ~~notice provided by electronic transmission shall be treated as if~~
12 ~~mailed or given for the purposes of any provision of this code,~~
13 ~~except as provided by subdivision (g) of Section 1633.15 of the~~
14 ~~Civil Code. The insurance company shall maintain a system for~~
15 ~~confirming that a notice or document that is to be provided by~~
16 ~~electronic means has been sent in a manner consistent with Section~~
17 ~~1633.15 of the Civil Code. A valid electronic signature shall be~~
18 ~~sufficient for any provision of law requiring a written signature.~~
19 ~~The insurance company shall retain a copy of the confirmation~~
20 ~~and electronic signature, when either is required, with the policy~~
21 ~~information so that they are retrievable upon request by the~~
22 ~~Department of Insurance while the policy is in force and for five~~
23 ~~years thereafter.~~

24 ~~(b) This section shall become operative on January 1, 2019.~~